On reason and by the decided weight of authority it seems that the instant case was erroneously decided. The jury should have been instructed that the burden of proof was upon the plaintiff. The dissenting opinion of the Chief Justice states the correct rule.

CONTRACTS—INTERFERENCE WITH PERFORMANCE—INJUNCTION.—The plaintiff, while an infant, entered into a contract with defendants for the engagement of her services as an actress. Upon reaching her majority the plaintiff disaffirmed this contract, and entered into another contract with a third party. The defendants, representing to the latter that the plaintiff was still under a contract with them, induced the third party to break his contract with the plaintiff, agreeing to indemnify him for any loss that he might suffer by so doing. Suit was brought for an injunction to restrain defendants from intermeddling with the plaintiff's contract rights. *Held*, the injunction should be granted. *Carmen* v. *Fox Film Corporation et al.*, 258 Fed. 703.

It is a well settled rule of law that an action will lie against a stranger who maliciously induces one party to a contract to break the contract to the injury of the other. *Angle* v. *Chicago, etc., R. Co.*, 151 U. S. 1. Under its power to protect the contract rights of parties equity will enjoin strangers from inducing a breach of a contract for personal services or from assisting in the continuance of the breach, upon proof that damages will not afford an adequate and complete remedy, and provided the contract is not violative of public policy. *Beekman* v. *Marsters*, 195 Mass. 205, 80 N. E. 817, 122 Am. St. Rep. 232, 11 Ann. Cas. 332, 11 L. R. A. (N. S.) 201; *Flaccus* v. *Smith*, 199 Pa. 128, 48 Atl. 894, 85 Am. St. Rep. 779, 54 L. R. A. 640. See *Miles Medical Co.* v. *Park*, 220 U. S. 373. The rule is applicable whether the employment be for a fixed time or at the will of either party. *Moran* v. *Dunphy*, 177 Mass. 485, 59 N. E. 125, 83 Am. St. Rep. 289, 52 L. R. A. 115; *Brennan* v. *United Hatters of North America*, 73 N. J. L. 729, 65 Atl. 165, 9 L. R. A. (N. S.) 254. But see *Baker* v. *Metropolitan Life Ins. Co.*, 23 Ky. L. Rep. 1174, 64 S. W. 913, 55 L. R. A. 271; *Raycroft* v. *Tayntor*, 68 Vt. 219, 35 Atl. 53, 54 Am. St. Rep. 882, 33 L. R. A. 225; 1 VA. LAW REV. 412.

The rule has been held to apply also to the ordinary commercial contracts involving no employment or other distinctly personal relation. *Automobile Ins. Co.* v. *Guaranty Securities Corp.* (D. C.), 240 Fed. 222; *Knickerbocker Ice Co.* v. *Gardiner Dairy Co.*, 107 Md. 556, 69 Atl. 405, 16 L. R. A. (N. S.) 746; *American Law Book Co.* v. *Edward Thompson Co.*, 41 Misc. Rep. 396, 84 N. Y. Supp. 225. And this is in accord with the weight of authority. But in some States it is held not actionable to induce a breach of a contract which is not one of employment. *Boyson* v. *Thorn*, 98 Cal. 578, 33 Pac. 492, 21 L. R. A. 233; *Chambers* v. *Baldwin*, 91 Ky. 121, 15 S. W. 57, 11 L. R. A. 545, 34 Am. St. Rep. 165. The Federal courts have apparently made no distinction, but have held that an injunction will issue whether or not the contract be one of employment. See *Hartman* v. *Park* (C. C.), 145 Fed. 358; *Citizens' Light Co.* v. *Montgomery Light Co.* (C. C.), 171 Fed. 553.

It is no defense in cases such as the one under discussion that the

defendant was not actuated by spite or a desire to injure. Actual malice is not a necessary element of the liability. To do intentionally that which is calculated in the ordinary course of events to damage and which in fact does damage another person in his property or trade is malicious in law if done without justification or excuse, or in wanton disregard of the rights of others. And it is immaterial that defendant acted under a wrong understanding of his rights. *Bitterman* v. *Louisville, etc., R. Co.*, 207 U. S. 205, 12 Ann. Cas. 693; *Hitchman Co.* v. *Mitchell*, 245 U. S. 229, L. R. A. 1918C, 497. But see *Chambers* v. *Baldwin, supra.* Competition in business is not actionable, provided no unfair means are employed. *Lewis* v. *Huie-Hodge Lumber Co.*, 121 La. 658, 46 South. 685; *West Va. Transportation Co.* v. *Standard Oil Co.*, 50 W. Va. 611, 40 S. E. 591, 88 Am. St. Rep. 895, 56 L. R. A. 804. But the defendant cannot maintain that he was acting to advance his own interests under the right of competition as a justification or excuse for inducing the breach of existing contracts. Nothing short of an equal or superior right will suffice. *Walker* v. *Cronin*, 107 Mass. 555. But see *Glenco Sand Co.* v. *Hudson Bros. Commission Co.*, 138 Mo. 439, 40 S. W. 93, 60 Am. St. Rep. 560, 36 L. R. A. 804. Nor is the fact that the plaintiff has a right of action against the other party to the contract a defense. *Raymond* v. *Yarrington*, 96 Tex. 443, 73 S. W. 800, 97 Am. St. Rep. 914, 62 L. R. A. 962.

As to acts of interference by a third party whereby the plaintiff is prevented from making a contract, the criterion of liability is the existence or non-existence of a malicious motive. If the acts are prompted by a desire to advance his self-interest under the general right of competition in business, and no unlawful means are employed, no liability attaches to the defendant. *Roseneau* v. *Empire Circuit Co.*, 131 App. Div. 429, 115 N. Y. Supp. 511; *Robison* v. *Texas Pine Land Ass'n* (Tex. Civ. App.), 40 S. W. 843. But if unlawful means are employed the defendant will be held liable. See *Willner* v. *Silverman*, 109 Md. 341, 71 Atl. 962, 24 L. R. A. (N. S.) 895; *Van Horn* v. *Van Horn*, 52 N. J. L. 284, 20 Atl. 485, 10 L. R. A. 184. If the acts of the defendant were done without justification or excuse, and not for the advancement of self-interest, but with the intention of injuring the plaintiff in his business by preventing him from obtaining the benefits of future contracts, an action for damages will lie. *Dunshee* v. *Standard Oil Co.* (Iowa), 126 N. W. 342. But see *Boyson* v. *Thorn, supra.*

HOMICIDE—INSANITY—BURDEN OF PROOF.—In a trial for murder the defendant pleaded insanity. *Held*, the burden was on the defendant to prove by a fair preponderance of evidence that he was insane when he killed the deceased. *Commonwealth* v. *Dale* (Pa.), 107 Atl. 743. See NOTES, p. 209.

INSURANCE—INCONTESTABLE CLAUSE—FRAUD AS A DEFENSE TO THE INSURER.—A life insurance policy provided that it would be incontestable from date of issue. In an action on the policy, the insurer set up the defense of fraud on the part of the insured in his application for the